

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

REHEARING
DECISION

MRA-66/49818

PRELIMINARY RECITALS

A rehearing decision was filed October 4, 2001 to review a decision (issued September 27, 2001) from a hearing held August 10, 2001 pursuant to a petition filed July 12, 2001, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washington County Dept. of Social Services in regard to Medical Assistance (MA). No new hearing is necessary here; a decision can be made from the original record.

The issue for determination is whether the MA certification ordered in the original decision may be backdated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

State Agency:

Represented By:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Maxine Ellis, ES Supervisor
Washington County Dept Of Social Service
333 E. Washington Street
Suite 3100
West Bend, WI 53095

Administrative Law Judge:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

No new hearing was held here. The original Decision is incorporated herein by reference. The following Findings were taken from the original hearing record as well as from correspondence filed pursuant to the rehearing request.

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Washington County. The Petitioner began residence in a nursing home on April 18, 2001.
2. An application for institutional Medical Assistance was filed with the county agency on behalf of the Petitioner on June 19, 2001.

3. The original decision, dated September 27, 2001, in this matter ordered that the county agency certify the Petitioner for MA but did not specify an eligibility date. The county agency certified the Petitioner for MA effective June 1, 2001.
4. The Petitioner filed the instant rehearing request seeking to have MA backdated to April 18, 2001.
5. The (petitioner) monthly income at the time of institutionalization was as follows: (*husband*) - \$ 1844.00, consisting of a \$ 527.00 pension and Social Security in the amount of \$ 1317.00; (*wife*) (the community spouse) - \$ 473.00, all from Social Security and *joint* - \$507.54; all from interest on savings. Thus the total income was \$ 2824.54. (See Exhibit # 4 from original hearing, dates corrected at that hearing to April 18, 2001 by Atty. Behrend).
6. The original decision noted that the minimum monthly needs allowance in this case is \$ 1875.00. There is no challenged noted to this figure.

DISCUSSION

MA may be backdated to the first day of the third month prior to the month of application. HFS 103.08(1), Wis. Adm. Code. Here the county agency certified the Petitioner for MA effective June 1, 2001. The county agency declined to further backdate without an order to do so because the (petitioner) assets were higher at the time of institutionalization than at the time of application.

As noted at paragraph 8 of the Discussion section of the original decision, the Blumer decision requires that assets be allocated to the community spouse to move that spouse's income up toward the minimum monthly needs allowance. After that allocation other income is allocated to bring the total income allocated to the community spouse to the minimum monthly needs allowance. Because the income of the community spouse is only \$ 473.00 this means that all of the (petitioner) assets as of April 18, 2001 must be allocated to the community spouse. Furthermore, this only brings (spouse) income to \$ 980.54 thus additional income from the Petitioner must also be allocated to the community spouse to bring her income to \$ 1875.00.

County agencies should be aware of the potential for backdating MA eligibility to the first day of the third month prior to the month of application. The rest of this matter is no different than noted in the original hearing and subsequent decision. Why a separate order is needed by the county agency here is not clear to me, nonetheless I will make such an order.

CONCLUSIONS OF LAW

That MA certification can be backdated to the first day of the third month prior to the month of application provided all eligibility criteria are met. No bar to backdating has been demonstrated in this case.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to take the administrative steps necessary to allocate all of the (petitioner) non-exempt assets to the community spouse, to allocate income from the Petitioner to his wife to raise the community spouse's income to the monthly minimum needs allowance and to certify the Petitioner for MA backdated to April 18, 2001. These steps must be taken within 10 days of the date of this Order.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this _3rd day of
January, 2001.

/s David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
27/DDF